It is to be observed that in so deciding that Shell was not prohibited from moving against the land as judgment creditor of U.C. the learned Judge also proceeded on the assumption that the trust that created the equity was perfect and complete.

We are inclined to think that the learned Judge misdirected himself in this issue. We find it difficult to see how this question could still arise. We say this at the risk of repetition, principally for the reason that the claim to the purported trust, if any, had completely ceased to exist. If therefore Shell's claim was founded essentially upon the alleged trust and this question has since ceased to exist, can it be said that it was still open to Shell to seek in law the adjudication of that issue notwithstanding that the party whose alleged or purported interest has since abandoned that claim? We think not.

We are by no means satisfied on the facts obtaining and upon those we adverted to earlier that the learned Judge was right when he held that the breach of the peremptory orders had the effect of extinguishing only U.C.'s alleged interest in the land and it was only limited to a prohibition by U.C. alone from pursuing with the claim to equitable ownership of the land as against the appellant. It is also common ground that Shell's prohibitory order was only registered on March 9, 1982 at which time U.C.'s right to any interest in land or purported interest in land on an alleged and purported trust had already been finally and completely extinguished.

If therefore U.C. had ceased to have interest whatsoever in the land, the registration of the prohibitory order on the strength of an alleged or purported interest of an equitable owner in land could not, in our view, be said to have been validly effected and would not have had any legal effect.

Contumelious conduct and an abuse of the process of the court

When we speak of contumelious conduct, it is strictly related to the conduct of U.C. In so far as U.C. was concerned, it is clearly established that they breached the peremptory order and the application was struck off for contumelious conduct. Although the question is no longer in issue as it is essentially and effectively an issue between the appellant and U.C., it is only relevant in so far as Shell is concerned, basically, because they purported to step into the shoes of U.C.

Facts reveal and it is not in dispute that Shell knew and indeed the solicitors for Shell admitted that U.C. had intervened but did nothing. Shell waited for the decision of the court as to whose property it was before moving in and they moved only after realising U.C. had been ousted, i.e. after U.C.'s right had ceased to exist.

We do not see the necessity to labour on this point in the light of what we have stated earlier.

We see merit in the appellant's contention that Shell could and ought to have intervened during the pending proceedings of U.C.'s intervention. We refrain from speculating but would venture to say that if Shell had timely intervened it could be said that they had properly stepped into the shoes of U.C. Having failed to do that, Shell missed the boat and it was too late to seek relitigation of the matter after U.C.'s right had been finally extinguished. In the light of the foregoing we are not satisfied that the decision of the learned Judge could be upheld.

Accordingly we allow the appeal and reverse the order of the learned Judge, Kunjoo's application (Enc. 15 in O.S. 45/82) is allowed with costs. As for the application in Encl. 12 in C.S. 129/82, we set aside the order, and in so far as it is applicable to the appellant, allow it with costs.

Appeal allowed.

Solicitors: *Balendran Chong & Bodi; S. Sivasubramanian.*

NG TIOU HONG v. COLLECTOR OF LAND REVENUE, GOMBAK

[F.C. (Salleh Abas C.J (Malaya), Hashim Yeop A. Sani & Syed Agil Barakbah F.JJ) January 11 & March 13, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 37 of 1983]

Land Law – Land Acquisition – Valuation – Method adopted in arriving at valuation.

In this case the Selangor State Government decided to acquire a piece of land in Gombak consisting of 147 acres and owned by 14 co-proprietors in undivided shares. The Collector of Land revenue held an enquiry and assessed the whole of the land in the sum of $2,219,620.00 at

$15,000 per acre as compensation to be paid to the owners. The owners were dissatisfied and asked for the matter to be referred to court. Wan Hamzah J. in the High Court with the aid of two assessors awarded the sum of $2413,125.00. The learned judge divided the land into two parts – a north-western portion covering 12 acres 4 roods and 30 poles for which he accepted the valuation of $30,000.00 per acre valued by the appellant's valuer; and the rest of the 135 acres for which he accepted the valuation of the Collector's valuer at $15,000.00 per acre. The appellant appealed.

Held: (1) the real test by which the market value can be arrived at is to gather from the other sales what the whole land would be likely to realise in the market about the time of the acquisition. In this case it is clear that the learned judge erred in failing to apply the correct principle as a basis in determining the market value of the land;

(2) in this case the four lots of land in the locality sold prior to the acquisition, which were considered and accepted by the learned judge as comparables in determining the value of the land, could not be accepted as comparables, as they were small and there was a difference in the physical nature of the lands;

(3) the big area of the land, its location and nature do not render it marketable as with the smaller lots in the neighbourhood. In the circumstances, compensation in the sum of $2,500,000.00 as the market value of the whole land valued as one unit was reasonable and proper.

Cases referred to:

(1) *Chuah Say Hai* v. *Collector of Land Revenue, Kuala Lumpur* [1967] 2 M.L.J. 99.
(2) *Collector of Land Revenue* v. *Alagappa Chettiar* [1971] 1 M.L.J. 43, 46.
(3) *Collector* v. *Ramachandra Harischandra* A.I.R. 1926 Bomb. 44
(4) *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243.
(5) *Vyricherla Narayana Gajapatiraju* v. *Revenue Divisional Officer, Vizagapatam* [1939] A.C. 302, 312.
(6) *Nanyang Manufacturing Co.* v. *Collector of Land Revenue, Johore* [1954] M.L.J. 69.

FEDERAL COURT.

P.S. Gill for the appellant.

Abdul Malik bin Salleh, Legal Adviser, Selangor, for the respondent.

Cur. Adv. Vult.

Syed Agil Barakbah F.J. (delivering the Judgment of the Court): This is an appeal against the decision of the learned judge given in the High Court, Kuala Lumpur on January 24, 1983 relating to the determination of the market value of a piece of land held under Certificate of Title No. 3727, Lot No. 2388, Mukim of Batu, District of Gombak, in the State of Selangor. This 147 acres of land is owned by 14 co-proprietors in undivided shares of which the Appellant is the registered owner of 800/23670 shares. It was part of Sungai Tua Estate which had undergone fragmentation.

The Selangor State Government decided to acquire the whole of the said land for the purpose of sub-dividing and distributing to the landowners who had been displaced due to the construction of a dam for a flood control scheme involving their lands at Batu. All the necessary requirements under sections 3 to 7 of the Land Acquisition Act, 1960 having been complied with, a declaration of intended acquisition under section 8 was published in the State Government Gazette on April 10, 1980 (page 43 of Record). On May 15, 1980 a public notice of inquiry of the intended acquisition was issued by the Collector of Land Revenue, Gombak under section 10 and on May 15, 1980 notices requiring statements in writing were issued under section 11(2) of the Act (pages 45 and 46 of Record). The Collector held an enquiry under section 12 on 13th September, 1980 and completed it on November 13, 1980. He assessed the whole of the scheduled land in the sum of $2,219,620.00 at $15,000.00 per acre as compensation to be awarded to all the registered co-owners who were subsequently served with the required notice under section 14 (pages 51 and 52 of Record). Notices were also issued under section 22 to enable the Collector to take formal possession of the scheduled land. All the 14 co-proprietors being dissatisfied with the Collector's award which they accepted under protest filed a written application to the Collector requiring him to refer the matter to the High Court for determination by virtue of section 38 (pages 7 to 9 of Record).

The Appellant's reference was heard by Wan Hamzah J. with the aid of two assessors on January 17, 1983 and completed on January 24, 1983. The award by the learned judge amounted to $2,413,125.00 from which the Appellant was entitled to $81,600.00 being the value of his 800/23670 shares and the value of the scheduled land worked out to $16,311.78 cts. per acre.

The Appellant being dissatisfied with the decision has now appealed to this Court. The decision of this Court was agreed upon to be binding on all the other co-proprietors who had earlier objected to the award.

There are ten grounds of appeal which are overlapping and inter-connected but the crux of the appeal relates to the method by which the trial judge adopted in arriving at the valuation of the scheduled land. He accepted the valuation of $30,000.00 per acre valued by the Appellant's valuer and applied it to the north west portion of the scheduled land covering 12 acres 3 roods and 30 poles in area. For the rest of the 135 acres he accepted the valuation by the Collector's valuer at $15,000.00 per acre. Having obtained the total sum of $2,413,125.00 for the whole area, he then assessed the Appeallant's 800/23670 shares and awarded the sum of $81,600.00 as compensation. In other words, he sub-divided the scheduled land into two separate portions and valued them separately instead of valuing the land as a whole.

Under the Act there is no provision relating to the method of valuation. However the Courts have adopted the principle of valuing the scheduled land as a whole especially in cases where the area is large and owned by numerous individual owners in different portions. In *Chuah Say Hai & Ors.* v. *Collector of Land Revenue, Kuala Lumpur*[1] Gill J.'s ruling in that case was later re-affirmed by their Lordships of the Privy Council in *Collector of Land Revenue* v. *Alagappa Chettiar*[2] which held that under the Land Acquisition Act, 1960 the scheduled lands are to be valued as a whole. The learned judge in that case valued the whole of the 23 acres as a single unit even though the totality of the land acquired were held by the applicants in seven separate titles for areas varying between approximately 11 acres and just under half-acre. He was right in law in doing so.

In contrast is the Indian case of the *Collector* v. *Ramchandra Harischandra*[3]. The judge in that case adopted a similar method as done in the present case. On appeal he was overruled on the ground that it was impossible to divide the whole of approximately 13 acres of land into separate portions and give one value to so much of the frontage land and divide again the interior land into separate portions and value them again at different rates. Of course, in the present case the learned judge did not adopt the latter part since he did not sub-divide the interior part of the scheduled land into separate portions but only took the remainder as a whole and assessed lesser value than the north west portion. The real test by which the market value can be arrived at is to gather from the other sales what the whole land would be likely to realise in the market about the time of acquisition. It is clear therefore that the learned judge erred in failing to apply the correct principle as a basis in determining the market value of the scheduled land.

There are of course other principles that have to be applied according to the facts and circumstances of a particular case along the lines provided by the First Schedule to the Act and as decided from time to time by the courts. We consider the following as the main principles:–

First, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future e.g. the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence. [*Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.*[4], *Vyricherla Narayana Gajapatiraju* v. *The Revenue Divisional Officer, Vizagapatam*[5], and *Nanyang Manufacturing Co.* v. *Collector of Land Revenue Johore*[6]].

The safest guide is evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparables

subject to making allowances for all the circumstances.

In the present case four lots of land in the locality sold prior to the acquisition were considered and accepted by the learned judge as comparables in determining the value of the scheduled land.

According to the Appellant's valuer Lots 1783 and 1784 were sold on November 2, 1979 at $39,095 per acre. The total acreage is 6.906 acres. The lots were used as a poultry farm which was abandoned prior to the sale. There used to be temporary dwellings at that time. The lots are now vacant and overgrown with blukar. They are situated to the left of the scheduled land, are level and low lying with a stream running by. There is ready access to the main road. (See plan on page 44 of Record).

Lots 9515 and 9517 situated to the south of the scheduled land are hilly with no legal access. Lot 9515 is slightly more than 5 acres and was sold on May 5, 1980 at $12,612 per acre. Subsequently on December 6, 1982 it was sold again at $43,000 per acre i.e. about two and a half years after the date of acquisition and does not therefore reflect the value of the land at the time of acquisition. Lot 9517 is slightly more than 10 acres and was sold on June 14, 1978 at $10,000 per acre.

In reviewing the evidence we do not consider that the four lots can be accepted as comparables with the scheduled land, Lot 2388. They are too small in size as compared with 147 acres of Lot 2388. The physical nature of Lot 2388 is of a hilly topography, part of it has been excavated off its top soil and part of it is covered with rubber and lush vegetation. There is no evidence that tapping was being done of the rubber to indicate any income derived from it.

Regarding the question as to whether there is any legal access to the land, we are satisfied that there is none. Access to it is by means of a foot bridge across the Batu River leading to Lots 1783 and 1784 which are not state land. There is no provision for a road reserve but only for a river reserve. Similarly other access is through other people's lands. The road reserve between Lots 1624 and 1636 does not come anywhere near the scheduled land. The evidence of the Collector of Land Revenue (PW2) is very clear on these points.

The other point that was raised by the Appellant relates to the allegation that the Collector of Land Revenue who heard the inquiry made two different valuations viz. under "the Order" appearing on page 49 of the Record he accepted the valuation of the Government Valuer for the scheduled land at $20,000.00 per acre but on page 51 he valued the land at $15,000/- per acre which was the sum accepted without any objections being raised before the learned judge. We cannot accept this argument as tenable. It is an inadvertent error since the total sum of $2,219,620.00 recorded by the C.L.R. in the next paragraph on page 50 as compensation works out to about $15,000.00 per acre. Nor can the sum stated be accepted as 75% of the actual amount of compensation as suggested because the order issued under section 14 appearing on page 51 of the Record shows separate awards to each of the 14 registered owners involved in the enquiry as required by the section. The amount of compensation remains the same. The note appearing at the bottom merely states that 75% of the compensation is to be paid by virtue of section 29A.

In conclusion we are of the view that the big area of the scheduled land, its location and nature do not render it easily marketable as with the smaller lots in the neighbourhood. In our considered judgment compensation in the sum of $2,500,000.00 as the market value of the whole land valued as one unit, is reasonable and proper. That works out to slightly more than $17,000/- per acre. We order accordingly.

The judgment of the Court below is set aside. The appeal is allowed. The deposit is to be refunded to the Appellant.

With regard to costs since there is only a slight increase in the award there should be no order but the Appellant should be entitled to costs in the High Court.

Appeal allowed.

Solicitors: *Gill & Tang.*